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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,664	12/28/2000	Gary E. Sullivan	254/102	4545
30408	7590	08/04/2004	EXAMINER	
GATEWAY, INC. ATTN: SCOTT CHARLES RICHARDSON 610 GATEWAY DR., Y-04 N. SIOUX CITY, SD 57049			FOWLKES, ANDRE R	
			ART UNIT	PAPER NUMBER
			2122	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/752,664

Applicant(s)

SULLIVAN, GARY E.

Examiner

Andre R. Fowlkes

Art Unit

2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: applicant's arguments are not persuasive (see item 10).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14 and 17-19.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other:

As per the arguments presented on pages 8-16 of the after-final amendment, the Examiner disagrees with the applicant's characterization of the applied art and contends that the applicant's amendments and arguments do not distinguish the application over the prior art for the following reasons.

The Lea document discloses "downloading applications (used to) control (legacy) devices within a home audio/video network", p. 4 lines 8-9. The Lea document also discloses that only rudimentary control protocols are obtained for the device, as pointed out by the applicant. The Ludtke document provides a proxy device that "can translate between different: command languages, command transport protocols, graphics formats, and text string formats (i.e. media content)", col. 15:23-25. One of ordinary skill in the art, at the time the invention was made, would have found motive to combine the Lea and Ludtke technologies in order to use the proxy translation technologies of Ludtke to provide for enhanced control and communication protocols for operating the legacy devices supported by Lea's technology.

Certainly, enhancements such as translating between different media contents, as noted above, are not just the expanded control functionality over legacy devices (as the applicant has characterized the prior art as teaching, and has argued for on p. 10 of the after-final amendment).

The Van Der Meulen document shows an example of the widely available capability of the "presentation of the (content) material that is played from the storage and playback devices", p. 4:10-11. One of ordinary skill in the art, at the time the invention was made, would find clear motive to combine Van Der Meulen's technology to the system of Lea and Ludtke to create the "abstract appliance", referred to in the Lea document, out of the desire to obtain a system that would exhibit the latest functionality, of displaying the content that is being played, while using such an existing legacy device, i.e. a CD player. Additionally, the Lea document further suggests "the specification of aggregate appliances where an abstract appliance is created from a logical collection of (services and functionality from) several lower-level appliances", p. 15:14-15.


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SUPERVISORY PATENT EXAMINER